

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BIO-RAD LABORATORIES, INC., THE
UNIVERSITY OF CHICAGO, LAWRENCE
LIVERMORE NATIONAL SECURITY, LLC, and
PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,

Plaintiffs,

v.

STILLA TECHNOLOGIES, INC., and STILLA
TECHNOLOGIES,

Defendants.

BIO-RAD LABORATORIES, INC.,
Plaintiff,

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,

Co-Plaintiff,

v.

10X GENOMICS, INC.,
Defendant.

10X GENOMICS, INC.,
Counterclaim Plaintiff,

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,

Counterclaim Co-Plaintiff as to
certain claims,

v.

BIO-RAD LABORATORIES, INC.,
Counterclaim Defendant.

Civil Action No. 1:19-cv-11587-WGY

DEMAND FOR JURY TRIAL

Civil Action No. 1:19-cv-12533-WGY

DEMAND FOR JURY TRIAL

PLAINTIFFS' MOTION TO ADOPT PRETRIAL SCHEDULE

Plaintiff and Counterclaim Defendant Bio-Rad Laboratories, Inc. (“Bio-Rad”), Plaintiff The University of Chicago, and Plaintiff Lawrence Livermore National Security, LLC (collectively, “Plaintiffs”), request that that Court adopt the pretrial schedule at Exhibit A in Case No. 1:19-cv-11587-WGY (“Stilla Case”) and Case No. 1:19-cv-12533-WGY (“10x Case”).

Over one month ago, the Court issued an order on the parties’ discovery disputes and ordered the parties to “discuss and agree upon a new discovery cut off date.” ECF No. 186.¹ Since then, Plaintiffs have moved to comply with the Court’s order and believe that they will be able to complete discovery by December 18, 2020. Despite the delay, the patent cases can be trial-ready by May 1, 2021 (a one-month delay from the original trial date). The antitrust case can be trial-ready on the previously set trial date of July 1, 2021.

The Defendants have thus far refused to provide an alternative schedule or provide any date by which they believe that discovery can be completed.² Having a firm deadline will assist in moving this case forward so that it can be readied for trial. The proposed schedule provides more than sufficient time especially given that the parties were only days away from serving expert reports when the Court’s order on the discovery disputes issued.³

¹ All docket citations are to Case No. 1:19-cv-12533.

² Still has informed Bio-Rad that its trial counsel may have a conflict for a trial in May 2021. If that conflict continues to exist as trial approaches, the parties can confer regarding possible alternatives consistent with the Court’s schedule.

³ 10X and Bio-Rad previously disputed as to whether the antitrust trial should have a slightly different schedule consistent with the later trial date. ECF. No. 147. The proposed schedule adopts the approach previously discussed by Bio-Rad wherein the later antitrust case has expert, summary judgment and pre-trial deadlines consistent with a July trial ready date for efficiency sake. *See* Fed. R. Civ. P. 1. Bio-Rad incorporates its briefing on the issue here. *See* ECF No. 147 at 12-15. 10X and Bio-Rad also disputed as to whether 10X should be permitted to amend its antitrust pleadings without leave of Court. Given that 10X has yet to file any amended pleadings, and the Court dismissed certain of 10X’s antitrust counterclaims over three months

To date, the parties have taken 53 depositions in this case and have produced (or cross-produced) over 6 million pages of documents. At some point fact discovery must end so that expert discovery can proceed. The proposed schedule provides more than sufficient time for the parties to complete whatever additional discovery is necessary. Indeed, the parties are currently working on narrowing ESI terms, and assuming 10X's cooperation, will be able to complete production before the proposed deadline.

10X has repeatedly attempted to delay trial in this case. After a stay of 90 days due to COVID-19, Bio-Rad moved the Court to have a schedule set. 10X incorrectly argued that the April 2021 patent trial dates were struck and were never reinstated. ECF No. 119 at 1. This was incorrect. ECF. No. 143 at 12:8-18, 15:1-3, 17:21-18:8 (7/31/20 Hearing Tr.). Now, 10X is acting again as if there is no trial date set and proceeding to draw out fact discovery with nonsensical complaints.⁴ For example, 10X is now demanding an additional ESI custodian (for a total of 6) after the Court explicitly rejected its previous request and ordered that the Defendants were limited to a total of 5. *See* ECF No. 186 at Issue #6 (p. 58).

Given that the parties have already been given an additional two months for fact discovery, Bio-Rad respectfully requests that the Court set a deadline for discovery and adopt the pretrial schedule proposed in Exhibit A.

ago (ECF No. 159), it makes even less sense to allow it now, let alone as of right. Bio-Rad incorporates its briefing on the issue here. *See* ECF No. 147 at 17-18.

⁴ Notably, 10X has not brought any of these complaints to the Court.

Dated: December 2, 2020

Respectfully submitted,

By: /s/ Justin L. Constant

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

Counsel for Plaintiffs hereby certify that the parties conferred by phone on November 16, 2020 (with 10X's counsel) and on November 23, 2020 (with Stilla's counsel) and by email regarding the filing of this motion. Bio-Rad understands that 10X disputes whether the parties sufficiently conferred. Bio-Rad disagrees, and believes, given the timing, that the issue is ripe to bring to the Court's attention. Harvard does not join or oppose the motion.

/s/ Justin L. Constant
Justin L. Constant

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 2nd day of December 2020.

/s/ *Justin L. Constant*
Justin L. Constant